IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Bail Appl..No. 5491 of 2007()

CRIME NO.5/06 OF PERUNADU POLICE STATION
CP.12/2007 of J.M.F.C.,RANNI

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PETITIONERS/ACCUSED 3 & 4:

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1. SAJITHKUMAR, S/O. RAVEENDRAN,
POOTHAKUZHIYIL HOUSE, NARANAMTHODU,PAMBAVALI MURI,
ERUMELI SOUTH VILLAGE, PATHANAMTHITTA DISTRICT.

2. SHAJI, S/O. RAVEENDRAN,
POOTHAKUZHIYIL HOUSE, NARANAMTHODU,PAMBAVALI MURI,
ERUMELI SOUTH VILLAGE, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.ABRAHAM SAMSON
SMT.LOVELY SAMSON

RESPONDENTS: STATE:

THE STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
PERUNADU POLICE STATION - THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5491 of 2007

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Dated this the 11th day of September, 2007

O R D E R

The petitioners face indictment as accused 3 and 4 in a prosecution, inter alia, under the provisions of the Kerala Abkari Act. The investigation is complete. Final report has been filed. The petitioners were not arrested at the crime stage. The petitioners are willing to appear before the learned Magistrate, but they apprehend that their application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. They therefore pray that directions under Section 438 and/or 482 Cr.P.C. may be issued in favour of the petitioners.

3. The learned Prosecutor opposes the application. He submits that there are no circumstances to justify the invocation of the powers under Section 438 Cr.P.C. in favour of the petitioners.

4. I find merit in the opposition by the learned Prosecutor. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (AIR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in favour of the petitioners, who apprehend arrest in a

pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

5. It is certainly for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the applications for bail to be filed by the petitioners when they surrender before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decisions in **Sukumari** v. **State of Kerala** (2001 (1) KLT 22) and **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in

charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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